

medically infeasible to the earlier of the following dates:

- (i) The date the reservist's training became medically feasible, or
- (ii) The reservist's delimiting date as determined by § 21.7550(a)(1) of this part.

(Authority: 10 U.S.C. 16133(b)(2), 38 U.S.C. 3031(d); Pub. L. 98–525)

[53 FR 34740, Sept. 8, 1988, as amended at 57 FR 57106, Dec. 3, 1992]

ENTITLEMENT

§ 21.7570 Entitlement.

Except as provided in § 21.7576(e) each reservist is entitled to a maximum of 36 months of educational assistance (or its equivalent in part-time educational assistance) under this program, but is also subject to the provisions of § 21.4020 (a) and (b).

(Authority: 10 U.S.C. 16131(c); Pub. L. 98–525, Pub. L. 102–127) (Oct. 10, 1991)

[58 FR 51783, Oct. 5, 1993]

§ 21.7576 Entitlement charges.

(a) *Overview.* VA will make charges against entitlement as stated in this section. Charges are based upon the principle that a reservist who trains full time for one day should be charged one day of entitlement, except for those pursuing:

- (1) Flight training;
- (2) Correspondence training;
- (3) Cooperative training; or
- (4) Apprenticeship or other on-job training.

(Authority: 10 U.S.C. 2131(c); sec. 705(a)(1), Pub. L. 98–525, 98 Stat. 2565; sec. 642(a), (b), (d), Pub. L. 101–189, 103 Stat. 1456–1458)

(b) *Determining entitlement charge.* This paragraph states how VA will generally determine the charge against the entitlement of a reservist who is receiving educational assistance. However, when the circumstances described in paragraph (e) of this section apply to a reservist, VA will use that paragraph to determine an entitlement charge instead of this paragraph.

(1) Except for those pursuing flight training, correspondence training, cooperative training, apprenticeship or other on-job training, VA will make a charge against entitlement—

(i) On the basis of total elapsed time (one day for each day of pursuit for which the reservist is paid educational assistance) if the reservist is pursuing the program of education on a full-time basis; or

(ii) On the basis of a proportionate rate of elapsed time, if the reservist is pursuing the program of education on a three-quarter, one-half, or one-quarter-time basis.

(2) VA will compute elapsed time from the commencing date of the award of educational assistance to the date of discontinuance. If the reservist changes his or her training time after the commencing date of the award, VA will—

(i) Divide the enrollment period into separate periods of time during which the reservist's training time remains constant; and

(ii) Compute the elapsed time separately for each time period.

(3) For each month that a reservist is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training, VA will make a charge against entitlement of—

(i) .75 of a month in the case of payments made during the first six months of the reservist's pursuit of the program of apprenticeship or other on-job training;

(ii) .55 of a month in the case of payments made during the second six months of the reservist's pursuit of the program of apprenticeship or other on-job training; and

(iii) .35 of a month in the case of payments made following the first twelve months of the reservist's pursuit of the program of apprenticeship or other on-job training.

(4) When a reservist is pursuing a program of education by correspondence, VA will make a charge against entitlement for each payment made to him or her. The charge will be made in months and decimal fractions of a month, as determined by dividing the amount of the payment by an amount equal to the rate stated in § 21.7636(a)(1) as the rate otherwise applicable to the reservist for full-time training.

(5) When a reservist is pursuing a program of education partly in residence and partly by correspondence,

Department of Veterans Affairs

§ 21.7576

VA will make a charge against entitlement—

(i) For the residence portion of the program as provided in paragraphs (b)(1) and (b)(2) of this section; and

(ii) For the correspondence portion of the program as provided in paragraph (b)(4) of this section.

(6) When a reservist is pursuing a program of education through cooperative training, VA will make a charge against entitlement of .8 of a month for each month in which the reservist is receiving payment at the rate for cooperative training. If the reservist is pursuing cooperative training for a portion of a month, VA will make a charge against entitlement on the basis of total elapsed time (.8 of a day for each day of pursuit).

(Authority: 10 U.S.C. 2131(c), (d); sec. 705(a)(1), Pub. L. 98-525, 98 Stat. 2565; sec. 642(b), (d), Pub. L. 101-189, 103 Stat. 1456-1458)

(7) When a reservist is pursuing a program of education through flight training, VA will make a charge against entitlement at the rate of one month for each amount equal to the monthly rate stated in §21.7636(a)(1) as applicable for the month in which the training occurred.

(Authority: 10 U.S.C. 16136(c))

(c) *Overpayment cases.* VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy; is waived and is not recovered; or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is

equal to or greater than the amount of interest administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees,

(ii) Subtracting the remaining amount of the overpayment balance determined in paragraph (c)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (c)(3)(i) of this section by the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (c)(3)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 10 U.S.C. 16133(c); Pub. L. 98-525)

(d) *Interruption to conserve entitlement.* A reservist may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An institution of higher learning may not certify a period of enrollment for a fractional part of the normal term, quarter or semester if the reservist is enrolled for the entire term, quarter or semester. VA will make a charge for the entire period of certified enrollment, if the reservist is otherwise eligible for educational assistance, except when educational assistance is interrupted under any of the following conditions:

(1) Enrollment is terminated;

(2) The reservist cancels his or her enrollment, and does not negotiate an educational assistance check for any part of the certified period of enrollment;

(3) The reservist interrupts his or her enrollment at the end of any term, quarter or semester within the certified period of enrollment, and does not negotiate a check for educational assistance for the succeeding term, quarter or semester; and

(4) The reservist requests interruption or cancellation for any break when an institution of higher learning was closed during a certified period of enrollment, and VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation. In such a case entitlement will be restored unless the reservist negotiated a check for educational assistance for the certified period and does not repay the amount received.

(Authority: 10 U.S.C. 16133(c); Pub. L. 98-525)

(e) *No entitlement charge for some reservists.* When the criteria described in this paragraph are met, there is an exception to the charges against entitlement described in paragraph (b) of this section.

(1) VA will make no charge against a reservist's entitlement when the reservist—

(i) While not serving on active duty, had to discontinue pursuit of a course or courses as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672(a), (d), or (g), 673, 673b, or 688 of title 10, U.S. Code; and

(ii) Failed to receive credit or lost training time toward completion of the reservist's approved educational, professional or vocational objective as a result of having to discontinue his or her course pursuit.

(2) The period for which receipt of educational assistance allowance is not charged against a reservist's entitlement shall not exceed the portion of the period of enrollment in the course or courses for which the reservist failed to receive credit or with respect to which the reservist lost training time.

(Authority: 10 U.S.C. 16131(c)(3)(A); Pub. L. 101-127) (Oct. 10, 1991).

[53 FR 34740, Sept. 8, 1988, as amended at 58 FR 51783, Oct. 5, 1993; 61 FR 29302, June 10, 1996]

COUNSELING

§ 21.7600 Counseling.

A reservist may receive counseling from VA before beginning training and during training.

(a) *Purpose.* The purpose of counseling is—

(1) To assist in selecting an objective;

(2) To develop a suitable program of education;

(3) To select an institution of higher learning appropriate for the educational or training objective;

(4) To resolve any personal problems which are likely to interfere with the successful pursuit of a program; and

(5) To select an employment objective for the reservist that would be likely to provide the reservist with satisfactory employment opportunities in light of his or personal circumstances.

(Authority: 38 U.S.C. 16136(b), 3233; Pub. L. 98-525)

(b) *Required counseling.* (1) In any case in which the Department of Veterans Affairs has rated the reservist as being incompetent, the reservist must be counseled before selecting a program of education. The requirement that counseling be provided is met when—

(i) The reservist has had one or more personal interviews with the counselor;

(ii) The counselor and the reservist have jointly developed recommendations for selecting a program of education; and

(iii) The counselor has reviewed the recommendations with the reservist.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(3) The Department of Veterans Affairs will take no further action on a reservist's application for assistance under this chapter when he or she—

(i) Fails to report for counseling;

(ii) Fails to cooperate in the counseling process; or

(iii) Does not complete counseling to the extent required under paragraph (b)(1) of this section.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3967(a); Pub. L. 98-525, Pub. L. 99-576)

(c) *Availability of counseling.* Counseling is available for

(1) Identifying and removing reasons for academic difficulties which may result in interruption of discontinuance of training, or